

Restriction is only proper if the claims of the restricted groups are either independent or patentably distinct. The burden of proof is on the Office to provide reasons and/or examples to support any conclusion with regard to patentable distinctness. MPEP §803.

Applicants respectfully traverse the requirement for restriction on the grounds that the Office has not provided adequate reasons and/or examples to support a conclusion of patentable distinctness between the identified groups.

In regard to Groups I and II, the Office has characterized the relationship between these groups as product and process of use. Citing MPEP §806.05(h), the Office states that the process as claimed can be practiced with a “materially different type of moisturizing composition.” Applicants note that the Office has merely stated an unsupported conclusion and has failed to show that its alleged use of the “moisturizing composition” is materially different from what is claimed. Accordingly, Applicants respectfully submit that the Office has failed to meet the burden necessary in order to sustain the Requirement for Restriction.

The Office characterized the relationship between Groups I and III, as product and process of use. Citing MPEP §806.05(h), the Office states that the process as claimed can be practiced with “skin barrier compositions that are materially different from the product of invention I”. Applicants note that the Office has merely stated an unsupported conclusion. However, there is no evidence of record to show that the claimed compositions are useful as the Office has alleged. In addition, the Office has failed to show that its alleged use of the claimed “skin barrier compositions” is materially different from what is claimed. Accordingly, Applicants respectfully submit that the Office has failed to meet the burden necessary in order to sustain the Requirement for Restriction.

The Office has characterized the relationship between Groups I and IV as product and process of use. Citing MPEP §806.05(h), the Office states that the process as claimed can be practiced using “compositions that is materially different from the composition of invention

I". However, there is no evidence of record to show that the claimed compositions are useful as the Office has alleged. In addition, the Office has failed to show that its alleged use is materially different from what is claimed. Accordingly, Applicants respectfully submit that the Office has failed to meet the burden necessary in order to sustain the Requirement for Restriction.

Citing MPEP §§806.04 and 808.01, the Office has characterized Groups II and IV as "unrelated" inventions. However, Applicants note that the MPEP describes unrelated inventions as, for example, "an article of apparel such as a shoe, and a locomotive bearing", or "a process of painting a house and a process of boring a well." MPEP 806.04(A). Thus, unrelated inventions, as defined by the MPEP, are inventions which are directed to *completely* different technical fields, and have no reasonable relationship with each other. Applicants make no statement regarding the patentable distinctness of the inventions of Groups I and IV, but note that both Groups can be reasonably be searched in the same technical field. In fact both these groups are classified in class 424. Thus the inventions of Groups II and IV of the present invention do not meet the standard of "unrelatedness" of MPEP 806.04(A), discussed above, nor do they present a burden on the Office. Accordingly, Applicants respectfully submit that the Restriction is improper, and request that it be withdrawn.

In regard to Groups III and IV, the Office has characterized these groups as unrelated. Citing MPEP §§806.04 and 808.01, the Office suggests that "the method of reinforcing the skin barrier function and the method of remedying excessive hair dryness are not disclosed as capable of use together, and they have different functions and effects." However, Applicants respectfully submit that the Office has merely made a conclusion, and has not provided examples/explanation to suggest that these Groups are unrelated, as alleged. Accordingly,

Applicants respectfully submit that the restriction requirement is improper, and it should therefore be withdrawn.

Citing MPEP §§806.04 and 808.01, the Office has characterized Groups II and III as "unrelated" inventions. However, Applicants note that the MPEP describes unrelated inventions as, for example, "an article of apparel such as a shoe, and a locomotive bearing", or "a process of painting a house and a process of boring a well." MPEP 806.04(A). Thus, unrelated inventions, as defined by the MPEP, are inventions which are directed to *completely* different technical fields, and have no reasonable relationship with each other. Applicants make no statement regarding the patentable distinctness of the inventions of Groups II and III, but note that both Groups can be reasonably be searched in the same technical field. In fact both these groups are classified in class 514. Thus the inventions of Groups II and III of the present invention do not meet the standard of "unrelatedness" of MPEP 806.04(A), discussed above, nor do they present a burden on the Office. Accordingly, Applicants respectfully submit that the Restriction is improper, and request that it be withdrawn.

Moreover, Applicants respectfully traverse on the grounds that the Office has not shown that a burden exists in searching the entire application. Applicants respectfully submit that a search of all the claims would not impose a serious burden on the Office.

Applicants make no statement regarding the patentable distinctness of the species, but note that for restriction to be proper, there must be a patentable difference between the species as claimed. MPEP §808.01(a). The Office has not provided any reasons or examples to support a conclusion that the species are indeed patentably distinct. Accordingly, Applicants respectfully submit that the restriction is improper, and Applicants' election of species is for examination purposes only.

With respect to the elected species, Applicants respectfully submit that, should the elected species be found allowable, the Office should expand its search to the non-elected species.

Finally, Applicants note that MPEP §821.04 states, "if applicant elects claims directed to the product, and a product claim is subsequently found allowable, withdrawn process claims which depend from or otherwise include all the limitations of the allowable product claim will be rejoined." Applicants respectfully submit that should the elected group be found allowable, the non-elected claims should be rejoined.

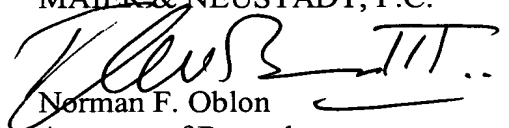
Therefore, for the reasons presented above, Applicants submit that the Office has failed to meet the burden necessary in order to sustain the Requirement for Restriction and Election of Species. Withdrawal of the Requirement for Restriction and Election of Species is respectfully requested.

Application No. 10/082,
Reply to Office Action of July 01, 2003.

Applicants respectfully submit that the above-identified application is now in
condition for examination on the merits, and early notice of such action is earnestly solicited

Respectfully submitted,

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